

# East Longmeadow Zoning Board of Appeals

60 Center Square

East Longmeadow, Massachusetts 01028

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Mark Beglane, chair  
John Garwacki, vice chair  
Charles Gray, clerk  
Brian Hill

Alfred Geoffrion, Jr.  
Francis Dean, associate  
robyn d. macdonald, director  
rmacdonald@eastlongmeadowma.gov

April 8, 2013

Present were: Chair, Mark Beglane; Vice Chair, John Garwacki; Clerk, Charles Gray, Alfred Geoffrion and Frances Dean.

## Appeal Hearing – Wendy Marchese, Heartsong Yoga, 264 North Main Street

Clerk Charles Gray read the legal notice into the record and letters from Wendy Marchese as follows:

Letter received on February 19, 2013

Mr. Daniel E. Hellyer  
Building Commissioner  
Town of East Longmeadow MA 01028

Mr. Hellyer:

This letter is an attempt to appeal the order to cease operating my therapy practice at 264 North Main St, Suite 5 as dated January 23, 2013. I have been practicing Cranio Sacral Therapy and Visceral Manipulation as well as other modalities at this location for 16 years. I have been in business under since 1983 at which time I was practicing massage therapy. I am under the guise of a state massage license but my work has evolved to these modalities which are performed over the clothes. I have done extensive training yearly to learn the most current, anatomically specific work available. You may visit my web site at wendymarchese.com to view my credentials. I can also supply you with letters from many physicians who refer their patients to me. I also continue to do lectures and demonstrations at Baystate Medical through invitation of the head of cardiology. I have clients travel long distances to be treated, especially autistic children. These clients often visit local businesses while they are here being treated. My ceasing to practice at this facility would also impact the Yoga Studio as I am there every day and often assist potential new students with questions. I am also a Yoga teacher at the facility. My request is that I may be "grandfathered" in so that I may continue to work at this facility where I have established a client base. I would love to meet with you to answer any questions

you have about my work. Please let me know the procedure from this point. I appreciate your time in this matter.

Letter dated March 19, 2013 from Wendy Marchese as follows:

Robyn D. Macdonald, Director  
East Longmeadow Zoning Board of Appeals

Please be advised that I am withdrawing my request for an appeal to the Zoning Enforcement Officer's decision regarding operation of a Massage Facility in a commercial zone at 264 North Main Street. I have decided to move my office to Agawam. I cannot afford to lose revenue over this political process. It is unfortunate as I have been doing business in your town for 17 years. Please return my check for the permit application. I assume there is no refund from the appeal process.

Upon motion duly made by Alfred Geoffrion and seconded by Charles Gray, the Board voted unanimously (6-0) to allow the withdrawal of the Appeal for Wendy Marchese, Heartsong Yoga, 264 North Main Street.

Notice of Appeal of Building Inspector/Zoning Enforcement Officer Dated  
February 4, 2013 file by Jay LeFebvre

Mr. Beglane said that he would like to do a motion to move that the Board ratify and confirm the action that the Director of Planning, Zoning and Conservation that the decision of the Building Inspector/Zoning Enforcement Officer dated of February 4, 2013 and thirty days from date was March 6, 2013, therefore the filing was because not timely as the appeal period had expired.

Mr. Hellyer was present and Mr. Beglane asked him if he recalled the date when the letter was sent to Mr. LeFebvre. Mr. Hellyer said that he didn't remember but went and got the file so that Mr. Beglane could verify the date.

Mr. Beglane said that in looking at the file the date of the letter was dated February 4, 2013 and read the letter into the record. He said that there is an e-mail from Jay FeFebvre dated March 6<sup>th</sup> to the Town Clerk.

Mr. Geoffrion said that there is form that is necessary to be filed with the Clerk, Ms. Macdonald said as well as a \$100.00 filing fee and she said that was the information from the Clerk and he needed his original signature. She said that prompted the Clerk let him know and he contacted her and she let Mr. LeFebvre know that day that he had to do it by the end of that business day and he did not.

Mr. Beglane said that Mr. LeFebvre sent an e-mail to the Town Clerk attempting to file an appeal by e-mail and said there is a form and a filing fee for the appeal. Ms. Macdonald said the Mr. LeFebvre was told that and she had contacted him on the 6<sup>th</sup> and gave him 2 ½ hours. Mr. Beglane said that he appeal has gone by and told Mr.

Hellyer that he didn't believe that Coyote Realty owns that property. Mr. Hellyer said they don't and they will get another letter. Ms. Macdonald said that Mr. Hellyer is going to issue another cease & desist to the right address;

Mr. Hellyer said that he based that on a letter that was sent to George Kingston with Coyote Realty letterhead. He said that 7 Roads Station owns that property and will start the process all over again. Ms. Macdonald said that there will probably be an appeal and said that the Clerk's Office received the \$100.00 on the 7<sup>th</sup> and as soon as she received that information she advised the Clerk not to deposit the money so they did not and they gave Mr. LeFebvre his money back as well as his papers.

Mr. Beglane said that they Boards needs to decided whether or not they want to give the Ms. Macdonald, Director the right to make that decision. The Board agreed that it would be better to keep Ms. Macdonald out of it and have the Board make the decisions.

Upon motion duly made by Alfred Geoffrion and seconded by Brian Hill, the Board voted (4-1) to ratify Ms. Macdonald's action and agreed to have a new form signed by Mr. Geoffrion.

Continuation Appeal Hearing - Rosemarie Gay, H.R. Wellness, 75 North Main Street

Chair, Mark Beglane continued the pubic hearing for Rosemarie Gay, H.R. Wellness. Mr. Gray read two letters received by Attorney Guiel into record as follows:

Dear Ms. Macdonald:

As a follow-up to my earlier letter this morning, it is also our understanding that there is an East Longmeadow Town Vote coming up fairly soon on May 20, 2013. Our understanding is that this vote will settle the question if massage therapy can be conducted in a Commercial Zone in East Longmeadow. As this appears to be the very issue being decided in Rosemarie Gay's Appeal, it may make sense to "table" the Appeal until the first available meeting after May 20, 2011 Please respond to these two letters as soon as possible so that I can instruct my client and plan whether to appear or not this evening.

Robyn, could I respectfully ask you to confirm. the exact location and meeting start time if we are forced to appear tonight in Attorney LaRocque's absence? Also, would you please forward these two letters as soon as possible today to the other members of the Zoning Board of Appeals, or in the alternative, e-mail their full legal names and contact information to me at iuiel@lplglaw.com (and also courtesy copy my assistant at lraschilla@plglaw.com) and we will deliver copies of both letters?

Thank you once again for your anticipated cooperation.

Dear Ms. Macdonald:

As you may recall, our office represents Mrs. Rosemarie Gay of H.R. Wellness. My partner, Ronald R. LaRocque, handled the initial hearing on this matter. Unfortunately again, Attorney LaRocque has a scheduling conflict tonight. We are respectfully requesting a short postponement of two weeks to Monday, April 22, 2013 at 6:00 p.m. for this review hearing.

Please note that I have discussed this potential postponement request by telephone with Chairman Mark Beglane who did not have an objection. Please feel free to confirm this fact with him and please confirm that my client and I do not need to attend tonight's hearing.

Thank you for your anticipated cooperation. I look forward to hearing from you.

Mr. Beglane said they have potentially have two motions, one would be to continue the hearing for 2 weeks as originally requested and the second would be to postpone the hearing until after town meeting in May to see if in fact the Massage Therapy passes at the town meeting. He said if they found it to be a Massage Studio it would make it mute if it was allowed in the commercial zone.

Mr. Geoffrion asked if it would make it mute given the nature of the other services provided. Mr. Beglane said that is the issue because she said it is only a part of what she does and it's not just massage therapy that it is more intense and there are bunch more other things that she does do. He said that they are waiting for her and her Attorney to get additional information to supplement what they had. Mr. Beglane said that Ms. Gay does a lot of services and they don't know how much of each she does and she is operating on her own currently without a doctor and in the past she was working under a doctor's office which was an allowed use. He suggested that they do the 2 week continuance to allow Attorney LaRocque to make his arguments and produce what ever he has come up with.

Upon motion duly made by Alfred Geoffrion and seconded by Francis Dean, the Board voted to continue the hearing until April 29<sup>th</sup> at 6:30 p.m.

Attorney Guile said as the author of the faxed letters dated that day he respectfully asked the Board that none of the delayed be penalized towards Ms. Gay. He said that he found out from his partner that he had an issue and he is not asking for sympathy, but frankly he was away all weekend and was trying to facilitate with Ms. Gay and Attorney LaRocque while he was away on vacation. Attorney Guile said whatever was last minute notice apologized to the Board and said it was nothing intentional to be disrespectful in anyway and said that Ms. Gay was referred to him by a long time client and said all though he has been a general attorney for 21 years municipal law is not his area of expertise for him. He said that Attorney LaRocque is their expert in their office in municipal law and he felt that t would be better since he was at the first hearing that he carries it through.

Appeal Hearing – Kenneth & Sharon LaVoie, 718 Parker Street

Chair, Mark Beglane opened the public hearing for Kenneth & Sharon LaVoie. Mr. Gray read the legal notice into the record and correspondence into the record. The Building Inspector letter dated February 14, 2013 as follows:

Father Kenneth DeVoie  
714 Parker Street  
East Longmeadow, MA

Dear Father DeVoie:

This department received a complaint regarding your wood pile along 718 Parker Street's property line. The Town of East Longmeadow's Zoning Bylaws defines a fence as, "A manmade barrier intended to prevent escape or intrusion or to mark a boundary." Our by-laws require fences more than one quarter solid to be three feet from the property line.

You are ordered to immediately move wood pile three feet in from your property line. Failure to comply with this order will result in the necessary legal action to enforce the bylaw.

You have the right to appeal this decision to the Zoning Board of Appeals within 30 days from the date of this order. If you choose to appeal this order, no action will be taken until the Zoning Board of Appeals has made their ruling.

Please contact me at 525-5400 x1150, should you have any questions.

Attorney Earl Seeley representative for the DeVoie's said that he knows Mr. DeVoie provided a letter that he thinks says everything he would like to say. He said that it is a wood pole that was placed on the driveway on the DeVoies' property about two years ago. Attorney Seeley said at that time it was four cores of wood and it is being regularly used and as a result it is about two cores of wood. Attorney Seeley said that the pile has been diminished and it is on the DeVoie's driveway, it was not erected as a fence, it was not erected to keep a pet in or to keep animals out of their yard. He said that it is simply a pile of wood that is being diminished by use over time and said that they were all were there about six months ago regarding a fence that is directly behind the pile of wood and the fence apparently was not in compliance with the zoning by-law's. Attorney Seeley said that an order was made that fence either be changed or moved and it has been changed by the people he assumes are the complainants in the case. He said that it appears from Mr. Hellyer's letter that a complaint was made to him about the pile of wood and a suggestion made that it was fence and his clients appealed it. Attorney Seeley said based on common sense it is not a fence it's a pile of wood and it is not there to mark the boundary and it is not there for any of the reasons that the definition would require to be three feet from the border. He said that it is man made in sense that it was placed there by a person who delivered the wood but it was not intended to prevent escape, it was not placed there to mark the boundary. Attorney

Seeley said that it is on the DeVoie's driveway that exists for their vehicles, it's being reduce and he imagines the next time a delivery is made it will be put in another place. He said for right now they don't feel that it does meet the definition of a fence and he thinks that he definition is pretty specific and that wood pile doesn't meet that definition.

Attorney Beglane said that he would like to enter the letter form the DeVoie's dated March 13, 2013 into the record as exhibit 1. He said exhibit 2 – 9 will be the pictures showing the location of the pile of wood, showing the fact that they do have wood burning facilities and it's their testimony that they actually use the wood on in their fire pits and two fireplace's in their home.

Mr. Hellyer said that he has not seen the letter. Mr. Beglane said the he wants him to be able to look at the letter and the pictures, at that time Mr. Hellyer read the letter and thanked Mr. Beglane. Mr. Beglane addressed Mr. Hellyer for any comments in terms of that letter. Mr. Hellyer said his point is that according to the definition it clearly states that it is a man made area, which it is intended to prevent escape or intrusion or to mark a boundary. Mr. Beglane said he is not sure of the intent but it didn't look to him to be a barrier intended to hold anything in or out and you can easily get around it and there is a fence that seems to serve that function. He said that he was out there at the first hearing way back and it was a wood pile then and there is a wood pile not as large as it was before but there 's still a wood pile there. Mr. Beglane said that he is not sure it is a fence because you can park your car and leave it there for a long period of time and you can have the same argument. Mr. Hellyer said a car could be easily moved, Mr. Beglane said so couldn't a wood pile, Mr. Hellyer said not as easy. Mr. Beglane said it is not as easy but he is not sure on the intent if the wood pile meets the parameters. Mr. Beglane addressed the audience.

Tim Lucier, 714 Parker Street said the reason what it is happening is because when Mr. DeVoie first got two cores of wood delivered he dumped onto his property. He said that Mr. DeVoie said he would move and stacked it right on the property line and it has been there ever since. Mr. Lucier said that they have a fire there once every two months and he presented the mortgage survey. He said it is an eyesore and is doing anything he can to be a nuance. Mr. Lucier presented pictures to the Board taken about 6 to 8 months ago and said that pile was damaging his fence.

Mr. Beglane introduced the pictures & plot plan into the record as exhibits 10-13.

Ralph Page said that he thinks the height goes to creditability and if you read the fence by-law all fence must be at least six inches from the property line and if it's four feet in height it makes a difference.

Mr. Beglane said the question is it solid and people have sheds sometimes on their property that clearly could be a barrier and they are down right by the corner and if the Board takes that decision they can then tell everybody that their sheds have to be so much off of the property or other personal items. He said the issue is was it intend to operate as a fence, is it a fence and if can't speak to what their intent is. Mr. Beglane said that people do have wood piles on their property and he is not willing to make the jump that it's a fence per say. He said that it is literally a wood pile, it's clearly not

something you can walk through but he not sure it was intended to keep people out as a fence would be. Mr. Beglane said if it was intended to be a fence he would think it would go along a good part of the boundary.

Upon motion duly made by Brian Hill and seconded by Alfred Geoffrion, the Board voted unanimously (5-0) to close the public hearing.

Mr. Geoffrion said clearly from the photographs shown on both sides of the dispute there is a wood pile on a driveway. He said clearly not intended to mark a boundary line for escape or intrusion. Upon motion duly made by Alfred Geoffrion and seconded by Brian Hill, the Board voted unanimously (5-0) to overturn the Building Inspector's decision.

There being no further business the meeting was adjourned at 7:30 p.m.

For the Board

Charles Gray, Clerk